In the Supreme Court of the United States.

OCTOBER TERM, 1878.

THE UNITED STATES, APPELLANTS,
vs.
EVELINA PEROT AND OTHERS. } No. 143.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

BRIEF FOR THE UNITED STATES.

This suit was brought under the act of 1860, ch. 188 (12 Stat., 85), as extended by the act of 1872, ch. 421 (17 Stat., 378), being the familiar act in regard to private land-claims in Louisiana, &c.

I have considered the record and the brief filed on behalf of the appellees, and am unable to suggest any error in the proceedings below.

S. F. PHILLIPS,
Solicitor-General.

Supreme Court of the United States.

October Term, 1877.

THE UNITED STATES, APPELLANT,
vs.
EVELINA PEROT, WIFE OF JOHN ASKEW, ET AL.
No. 409.

Appeal from the District Court U. S. for the District of Louisiana.

BRIEF FOR PLAINTIFFS AND APPELLEES.

This is a suit instituted May 13, 1874, in the United States district court for Louisiana, under the provisions of the act of Congress, approved June 22, 1860, (12 S. L., 85,) entitled "An act for the final adjustment of private "land claims in the States of Florida, Louisiana, and Mis- "souri, and for other purposes," as revived by an act approved June 10, 1872, (17 S. L., 378.)

Plaintiffs aver:

That they are the sole surviving descendants and heirs of Pierre Dolet and his wife, Marie Rose Dupré, of whom the former died about 1822, and the latter, without a second marriage, about 1836;

That, as such heirs, they are owners of a tract of land of

two Spanish leagues square, (four square leagues,) amounting to 23,506$\frac{26}{100}$ American acres, granted, in 1795, to said Dolet by the Crown of Spain, through its representative, Don Bernardo Fernandez, commandant at the "Post" of Nacogdoches; which grant had for its centre the house in which the grantee then lived; is situated between the Rio Hondo and Sabine rivers, in what later became known as the "Neutral Ground," but was then within the unquestioned sovereignty of the Spanish Crown and jurisdiction of the "Post" of Nacogdoches, and is now chiefly within the limits of De Soto parish, La., and in the northwest United States land district of said State; its centre, according to United States surveys, being at the common corner of sections 28, 29, 32, and 33 of township No. 12 north and range No. 11 west; about which centre, in a square form, the grant covers thirty-six sections, besides an additional surrounding strip that cannot be described in legal subdivisions;

That the grantee and his legal representatives, from the date of the grant to a period subsequent to the grantee's death, held and cultivated, in undisputed ownership, in good faith, and without question as to the genuineness of their title, said land; which was popularly known, and laid down on old maps, as the "Pre. Dolet claim," and that they have never ceased to assert their claim;

That the execution of said grant is evidenced by—

1st. The petition therefor by said Dolet to said Fernandez, Dec. 7, 1795;

2d. The order of said Fernandez to the procurador, dated Dec. 27, 1795, requiring that officer to put petitioner in possession of the land asked for, if it could be done without prejudice to other rights;

3D. The "procès verbal" or report of said procurador, dated Dec. 29, 1795, stating that he had, in the most formal manner, "in the name of his Majesty," put said Dolet in possession of the full amount of the land asked for;

4TH. The order of said commandant, dated January 14, 1796, to record said procès verbal, and to give said Dolet such evidence "of it as will enable him to prove his right "of property," coupled with his certificate of record;

5TH. That a copy of said four documents, with the certificate of said Fernandez, as to their correctness, dated May 30, 1796, was, by the legal representatives of said Dolet, presented to a Board of Commissioners appointed by the United States, under the acts of March 3, 1823, and May 26, 1824, to investigate titles to land between the Rio Hondo and Sabine; which commissioners embodied a translation thereof, together with additional testimony, in their report, dated Opelousas, Nov. 1, 1824, and recorded as Document 426 at p. 34 of vol. 4 of Duff Green's edition of "American State Papers—Public Lands," and recommended the claim for confirmation, placing it in the "Abstract" on page 75 in the first class;

6TH. That the authority of the commandants at Nacogdoches to make such grants is shown by abundant evidence at the beginning of said report, and has been since repeatedly recognized by the United States Supreme Court;

7TH. That some years after the date of said report said official copy of muniments of title was withdrawn from the United States land office at Opelousas by one Charles Noyrit, as agent for claimants, that they cannot be found, and are believed to be destroyed; and that the archives of the "Post" of Nacogdoches having been, about 1812, on

the occasion of a revolution, removed, it has never been known what disposition was made of them;

8TH. That petitioners, and those under whom they hold, have not, during the twenty years preceding the suit, possessed and cultivated the lands claimed;

9TH. That the United States have disposed of a large part of the lands covered by the grant, and that, under section six of the act under which the suit is brought, they have the right to enter upon any public lands of the United States, subject to private entry, at one $\frac{25}{100}$ dollars per acre, to an amount equal to that disposed of; and,

FINALLY. Petitioners averring the neglect of the Government, notwithstanding the evidence aforesaid, the favorable reports of its officers and treaty obligations to confirm their claim, pray the court to confirm it, and that it be decreed that patent issue in their favor for such portion of the lands granted as may remain undisposed of, and that they have warrants, locatable as aforesaid, for an amount equal to what has been disposed of.

The petition is verified by the oath of one of the complainants, and is accompanied by a skeleton map [coming here in original] showing the lands covered by the claim, according to the legal subdivisions of the United States surveys.

See Record, pp. 1, 2, 3, 4, and Agreement, p. 56.

The answer of the United States, though set out at great length, amounts simply to the general denial of Louisiana practice.

See Record, pp. 5, 6.

A general replication was then filed, and, after considerable evidence taken, the case was submitted to the court, and judgment rendered and signed for the plaintiffs, and the United States have appealed, in accordance with the requirements of section 11, act of June 22, 1860, (12 S. L., 88.)

Record, pp. 6, 54, and 55.

The decisions of the court *á quâ* is fully sustained by the evidence and supported by authority.

That the grant was made at the date, by the authority, to the extent, with the location and under the formalities as averred, is shown by the various reports of boards of United States commissioners; and especially by that of Nov. 1, 1824, which embodies an official translation of the original titles. The existence of the grant is here reported as proved; and under the provisions of section 7 of the act of June 22, 1860, (12 S. L., 86,) this fact must be taken as true, *prima facie*, and the evidence offered before the board must be admitted in this suit. And the record of this report in the "American State Papers—Public Lands" has, as evidence, the authority of the original.

In Watson *vs.* Holman *et al.*, (16 Peters R., p. 55,) this court said: "The very highest authenticity attaches to these "State papers, published under the sanction of Congress." And in Gregg *et al. vs.* Forsyth, 24 Howard R., p. 180, the court refers to this work as containing "authentic pa- "pers which are admissible as testimony without further "proof."

The parts of the report of Nov. 1, 1824, specially introduced in evidence, are—

Testimony taken by the board respecting the powers of post commandants at Nacogdoches; Spanish usages respecting grants of land; the territory embraced within the

"Neutral Ground;" the removal of the archives from Nacogdoches about 1812, &c.

Record, p. 32 *et seq.*, 4 Am. State Papers, Pub. Lands, pp. 34, 35, 36.

P. Dolet's claim, No. 113—translated title thereof, &c.

Record, p. 36 *et seq.*, and page 51 of said volume 4.

Claim of S. Davenport et al., No. 181—translated titles thereof, &c.

Record, pp. 22 and 61 of said vol. 4.

Abstract of P. Dolet's claim.

Record, pp. 36, 37, 38, and p. 75 of said vol. 4.

The original titles of Dolet were October 30, 1834, withdrawn from the land office at Opelousas by Charles Noyrit, as agent for the claimants, (*see his receipt, Record, p.* 48, *at top*,) were presented to a Board of Commissioners, that reported May 30 and June 6, 1840, and accompanied said reports, (*Record, pp.* 41, 42,) and should, with the original of that report, be in the United States Consolidated Land Office at New Orleans, to which were transferred the records of the Opelousas office; but it appears that they cannot be there found, (*see certificate of the register, Record, p.* 48,) nor are they among the papers of Noyrit, as is shown by the testimony of his son-in-law, Prudhomme, at page 20, at foot.

As, according to the testimony of Davenport, Mora, and Cortes, found in the report of Nov. 1, 1824, (*Record, pp.* 32 *to* 36,) which is supported by the witness S. De Soto in his answer to fourth interrogatory, (*Record, pp.* 8, 9, 10,)

the archives at Nacogdoches, where were deposited the duplicate-originals of these titles, were removed, the witnesses knew not whither, in 1812, it was not in our power to procure an exemplification thereof. Fortunately, under the law and the decisions referred to, we are relieved from any inconvenience on account of the loss of these papers.

The centre of the grant, the spot where stood the house of Dolet at date of grant, is shown to be as averred by the testimony of Simon De Soto in his supplemental answer to the fourth interrogatory, (*Record, p.* 14, *at foot,*) and by the evidence of the surveyor, John Wemple, (*Record, pp.* 10, 11.)

The contents, in acres, of the league are fixed by a Commissioner of the General Land Office, Edward Tiffin, (Rec., p. 42,) at 5,760 acres. This estimate was adopted by this court in the case of U. S. *vs.* Davenport's Heirs, (15 Howard Rep., p. 5.) Two leagues square, therefore—four square leagues—equal 23,040 acres.

The evidence presented to the commissioners that reported Nov. 1, 1824, and which has been before referred to as being found at the first of their report, shows that the authority of the commandants at Nacogdoches to make such grants was, at that time, universally acknowledged, and that the territory granted Dolet was within their jurisdiction. At page 7 of the case of Davenport's Heirs just cited, this court says: "The power of commandants of "posts in the Spanish colonies to make inchoate titles to "lands within their jurisdictions has been repeatedly ac- "knowledged by this court."

"The land comprehended in these grants," [it must be borne in mind that the Davenport lands were in the same region as that of Dolet,] "at their respective dates, was "within the unquestioned dominion of the Crown of Spain. "The evidence clearly established that the commandants

" of the Post of Nacogdoches, before and subsequently, " were accustomed to make concessions of lands in the " Neutral Territory."

The dates of death of the grantee and his wife; the exclusive heirship of complainants; the notoriety of the grant; the universal belief in its genuineness and validity; the long possession and cultivation as unquestioned owners under it; the evident good faith of claimants, and their unintermitted efforts to have it confirmed, are abundantly proved both by parole and documentary evidence.

Bertrand Plaisance testified before the Board of 1824 (see the report already referred to) that Dolet and his heirs had then occupied and cultivated the grant for thirty-five years, or from 1789. Under a commission dated April 26, 1875, we took the testimony of the following witnesses in De Soto parish: Simon De Soto, John Wemple, Jos. B. Elam, and Lestan Rambin; and the following in Natchitoches parish: Henry V. Tessier, Jean F. Levasseur, Jean B. Plaisance, Peabody A. Morse, and Narcisse Prudhomme. To Prudhomme separate special interrogatories were put. (See the interrogatories on Record, p. 16, and his replies on Record, pp. 20, 21; testimony of *De Soto*, Record, pp. 8, 9, 10; *Wemple*, pp. 10, 11; *Elam*, pp. 11, 12; *Rambin*, pp. 13, 14; *Tessier*, p. 17; *Levasseur*, p. 18; *Plaisance*, pp. 18, 19; *Morse*, pp. 19, 20.)

And under a commission dated May 3, 1876, were examined the following additional witnesses from Natchitoches: Marie M. Perot, Gervais Fontenot, Marie P. Adlé, Jno. M. Tessier. The interrogatories to these witnesses are found on Record, p. 51, and the answers are to be found, of *M. M. Perot* on page 52; of *Fontenot*, 52, 53; *Adlé*, on 53; *Tessier*, 53, 54.

These last witnesses were examined specially as to heirship of complainants, on which point they had peculiar

means of knowledge. They corroborate the other witnesses, and establish fully the exclusive heirship as averred.

De Soto, 69 years old when examined, and the son of the Spanish officer for the district of Bayou Pierre, and Rambin, 73 years old, were born in the neighborhood of Dolet, have always lived there, and knew intimately Dolet and his family. Levasseur, 66 years old, and Plaisance, 61 years old, were born near Natchitoches, and have always lived there. They knew Dolet in their childhood, and have always known the family.

De Soto, in his answer to fifth interrogatory, (Rec., p. 9,) in his supplemental answer to the third, (Rec., p. 14,) and in his answer to the cross-interrogatory, (Rec., p. 10,) states that Dolet and his only son died on the claim, where their graves are yet to be seen; that Dolet had two farms on the tract, and stocks of cattle and horses; that his heirs occupied the land till 1825 or 1830, and that the widow of Dolet, Jun., the grandmother of Mesdames Moreau and Askew, complainants, lived there some fifteen years longer.

Rambin, in his answer to third, fourth, and fifth interrogatories, (Rec., p. 13, 14,) testifies to the same facts. He states that Dolet's widow lived, several years after his death, at the plantation which he had established about two miles from the centre of the grant; while his daughter, Mrs. Adlé, lived at the old homestead at the centre.

Plaisance, in answer to third, fourth, fifth, and seventh interrogatories, (Rec., p. 19,) and in answer to the cross-interrogatory, (Rec., p. 19,) testifies to the long residence of the family on land, in Bayou Pierre settlement, notoriously acquired from the Spanish government—the source, in that day, of all titles to land in that region; as to Dolet's prominence as a citizen, as being the most extensive planter of the vicinage, and engaged also in stock-raising, then the more important industry.

M. P. Adlé, in her answer to third interrogatory, (Rec., p. 53,) and the cross-interrogatories on same page, states that Dolet, her grandfather, emigrated from Mons, in Belgium; that he acquired this grant (which has never been sold and still belongs to the heirs) from the Spanish government, lived on and cultivated it, raised stock thereon, there brought up a family, and there died and is buried. She, 49 years old, was born on the claim.

J. B. Elam, a distinguished attorney of De Soto parish, in his answer to the fifth interrogatory, (Rec., p. 12,) states that up to the passage of the act of 1860, which protects those who have acquired land within the grant from the United States, such persons had serious fears of eviction on account of this claim.

The notoriety of the claim is farther shown by its representation on an old standard map, (La Tourrette's.) See diagram and accompanying affidavit of Tully, (Record, p. 47.)

The witnesses, universally, establish the continued assertion of their claim by the heirs, and that during twenty years past they have not possessed and cultivated the land claimed. This last fact was required to be shown to entitle complainants, under section 11 of the act of June 22, 1860, (12 S. L., 87,) to proceed by suit, instead of being restricted to the presentation of their claim to the local Register and Receiver, acting as a Board of Commissioners.

In addition to the testimony of witnesses we have introduced documentary proof of the continued assertion of this claim. It figures in the report by the Register and Receiver at Opelousas, Dec. 30, 1815. See Vol. 3, "American "State Papers," at page 205, claim of Pre. Dolet, No. 1102, p. 583, with note on preceding claim, No. 1101. (Record, p. 31, *et seq.*)

It should be remarked that the acts of March 10, 1812,

Feb'y 27, 1813, and April 12, 1814, under which this report was made, did not contemplate the confirmation of claims to more than one league. The commissioners simply reported, as to this claim and the still larger one of Davenport, their ignorance of the signatures of the officers by whom they purported to have been granted, and of their authority to grant, referring the whole matter to the action of Congress.

The Dolet claim was again presented to and acted on by the Register and Receiver at Opelousas in 1824, and recommended for confirmation as of first class, as has been before shown, (*ante*, p. .)

It was presented to a third Board of Commissioners at the same office, and again recommended for confirmation in their reports of May 30 and June 6, 1840. These reports are to be found in House of Reps., 27th Congress, Session 2, Doc. No. 33, as published by authority of Congress in a volume entitled "Reports on Private Claims, "Louisiana."

In these reports this claim figures as *No.* 175, claim of *Rose Dupré, widow P. Dolet.* Extracts from these reports, from pages 73, 76, 81, 87, 88, 93 thereof, are in the Record, at pp. 41, 42.

Again, May 4, 1860, a committee of the Senate, 36th Congress, 1st Session, reported favorably on this claim, accompanying the report with a bill for its confirmation. (See the authentic copy of the report, Senate Doc., No. 425.)

Record, pp. 42, 43, 44, 45, 46, 47.

As to the disposition of the lands within the limits of the claim by the United States, we introduced the certificate of the Register of the land office at Natchitoches (which includes within its jurisdiction the land claimed) attached

to a transcript from the tract-books of the office, (Rec., p. 24 *et seq.*;) also a certified copy of a letter of instructions from the General Land Office to the local office, dated Nov. 29, 1871, directing the reservation of the vacant lands in odd sections, in the region occupied by the claim, for the benefit of a railroad. (Rec., pp. 30, 31.) In connection with these instructions reference is made to U. S. Statutes at Large, volume 16, pp. 575, 579, sections 3 and 22. There is also in evidence the map "B," showing, by indicative letters on the several legal subdivisions, the disposition thereof by the United States, with tabular statement and certificate of surveyor-general of Louisiana appended.

To show the operation of the homestead laws, under which much land appears to have been disposed of, we introduced a copy of a circular from the General Land Office, issued June 17, 1875, with special references, to wit:

On Record, p. 48, to sections 13, 14, 1st clause of 17. On page 49, two first clauses of sections 19, 21. Also first clause of section 29, including the table, and on p. 50, sections 2,289, 2,290, 2,291, 2,297, 2,301, R. S. U. S.

It is thus shown that a very large part of the lands claimed have been disposed of by the United States; but that only of a small portion has the disposition become final. The Railroad Company may not fulfil the conditions of the grant to it, and the grant may lapse. Homestead settlers may have abandoned, or during the seven years allowed them to perfect their title, may abandon their claims, and the lands settled may thus, according to the provisions quoted from the homestead laws, revert to the Government.

It was, therefore, impossible for the court to do more than render a judgment in the terms of the law, decreeing a patent in favor of claimants to such lands as have not been, by the United States, disposed of; and warrants for

an amount equal to that so disposed of, leaving it to the Commissioner of the General Land Office to determine what lands shall be patented, and for what amount warrants shall issue, according to the state of facts that shall exist at the final disposition of the case.

To recapitulate: the facts of the case, as developed by the evidence, are briefly these:

Pierre Dolet, a Belgian, came from Europe, and by the chances of emigration settled himself, about 1789, in the then wilderness region of the Bayou Pierre, in the extreme eastern portion of the Spanish province of Texas. Here he built a house, cleared land, gathered about him a stock of cattle and horses. A few years' experience having satisfied him with his choice of location, he availed himself of the liberality of the Spanish government, (anxious to induce settlement in the remoter regions of its illimitable domain,) and applied to the representative of that government at the "Post" of Nacogdoches—within whose jurisdiction lay the district of Bayou Pierre—for a grant of two leagues square, having his house for the centre, ("a league "around the compass" is the picturesque language of the *requête* or petition,) for the purposes of his flocks and herds, and for cultivation; for himself, his children, and representatives.

The amount asked was moderate when we consider that the chief business of the section was cattle-breeding, requiring the range of a large territory, and that land in these wild regions was of so little account as to justify this court in saying, (see Strother *vs.* Lewis, 12 Peters, 437, middle of page:) "What is now a splendid fortune, fifty years ago "was not worth the clerk's fees for writing the deed, and "passed from hand to hand, by parole, with less formality "than the sale of a bear-skin." Dolet might as well have applied for many times the amount demanded. Of the

the Davenport claims, confirmed by this court in the case already cited, one was for sixteen square leagues and the other for thirty-six square leagues; respectively, four and nine times as large as Dolet's.

The grant was made as asked, and Dolet showed his good faith by establishing thereon the permanent home of himself and his family. He opened two farms—for he appears to have had enterprise and the spirit of thrift that marks the people of his nation—raised flocks and herds, had born to him children and grandchildren; here he died, and here he, and others of his family, found their last resting-place. The grant was occupied and cultivated during forty or fifty years, till about the time when history tells us that the United States surveys were extended over the region, and an American population began to flock in; about which time Dolet's descendants—all females now—influenced, doubtless, by the intrusion on their lands which the neglect of the Government to confirm their title gave rise to, appear to have removed among their relatives in the old Creole settlements in the vicinity of Natchitoches. Claimants might almost base a claim to the land on prescription, for there is such a thing in Spanish law as prescription against the Crown. In Mr. White's compilation of Spanish ordinances respecting land-grants, it appears from the Royal Regulation, dated Oct. 15, 1754, that long possession, without warrants, gives title by prescription.

American State Papers, vol. 5, p. 235, 2d column at top.

It is shown that after the acquisition of Louisiana by the United States, Dolet availed himself of the first opportunity afforded him to apply for the recognition of his claim, by presenting it to the board that reported Dec. 30, 1815; that his legal representatives have presented it to each new

board that has, from time to time, been appointed; that they then made direct application to Congress; and, finally, his grandchildren and great-grandchildren are now suitors before this court. In all these proceedings no suspicion has been cast upon the good faith of claimants, no doubt expressed as to the genuineness of their title.

In Article 8 of the Treaty with Spain of Feb. 22, 1819, the United States solemnly promised to ratify and confirm all land grants in the ceded territories—and this treaty had reference to the section wherein was located the Dolet grant—made prior to January 24, 1818, "by his Catholic "Majesty, or by his lawful authorities, to the same extent "that the same grants would be valid if the territories had "remained under the dominion of his Catholic Majesty."

See R. S. U. S. relating to D. of C. Post Roads, and Public Treaties, p. 714.

In 1802, the King of Spain, in the royal order issued at Barcelona, October 15, announcing the cession of Louisiana to France, says: "We hope" and "promise ourselves that "all grants or property of whatever denomination made "BY MY GOVERNORS MAY BE CONFIRMED, ALTHOUGH NOT "CONFIRMED BY MYSELF."

5 Amer. State Papers, p. 274, No. 20.

This expression may be referred to in exposition of the spirit in which Spain made the stipulation contained in Article 8 of the treaty just cited. Indeed, the Article simply announced a principle of natural equity recognized by the law of nations.

We know no fuller or more forcible expression of the principles that govern this case than is made by this court in the case of Strother *vs.* Lewis, (12 Peters' Reports, 410.)

The court there say: That in acquiring the territory wherein is included, with other States, Louisiana, the United States took the place of the former government, its rights and its obligations; that these are regulated by the law of nations, by which rights of private property are *protected*, even in case of conquest; and in case of treaty, are *sacred*, even without stipulation to that effect. On page 436, near top, rights of property are defined to be any right, legal, equitable, inceptive, inchoate, or perfect, which before the treaty with France in 1803, or with Spain in 1819, had so attached to *tracts of land*, *great or small*, as to affect the conscience of the former sovereign with a trust, according to the law of nations, that of the sovereign himself, or THE LOCAL USAGE of the *colony or district*. It is also observed that the term "GRANT," in a treaty, comprises not only one in form, but any concession, warrant, order, or permission to survey, possess, or settle, evidenced by writing or parole, or *presumed from possession*.

At middle of page 437 it is said: There is no principle better settled than that the acts of an officer, (to whom a public duty has been assigned by the king,) within the sphere of that duty, are, *prima facie*, to be taken to be within his power.

If the act be against the written order of the king, shown on trial, it will, even then, be presumed done according to an order known only to the king and the officer.

At middle of page 438 it is said that, in Spanish territory, by royal order of 1754, the whole power of granting or confirming titles was transferred to officers in the colonies—*commandants of "Posts" and local authorities, who acted in their sole discretion*. Being authorized by the king to grant lands, he, being unwilling to expose the acts of his private and confidential officers and the titles of his subjects to the strict and jealous scrutiny of a new ruler, might

stipulate that such full faith should be given to the instrument itself which is usually given to instruments given by the proper officer. Even if the grant were under a general order subject to disavowal, it is to be deemed valid till actually disavowed. The court avow their ignorance of any such disavowal, and state that the assiduous research of Mr. White had brought none such to his knowledge.

There are in the reports many cases bearing more or less analogy to the one at bar. We deem it necessary to refer specially to but one: that of "Davenport's heirs," already cited from 15 Howard Rep., p. 1. Two grants were passed upon in that case. To show the precise parallelism of one of those grants—that to Jacinto Mora, for six leagues square, or more than 200,000 acres—with that under consideration, we have introduced, as already remarked, the grant in evidence, as translated at p. 61, vol. 4, "Ameri-"can State Papers," No. 181. It was made by the same commandant, Fernandez, in the same region, with the same formalities, and within a few days of the same date. It was, however, much larger—nine times, as before noticed—than Dolet's. It also appears never to have been personally occupied by the owners. They had thereon some cattle. That was all. While Dolet had his home and concentrated all his interests on the land granted him; thus reclaiming territory from the wilderness, developing its resources, and forming a nucleus for farther emigration, and consequent farther reclamation and development. This fact, we submit, adds greatly to the equities of our case.

This court, in the case cited, say, (page 6, near bottom:) "No imputation upon the authenticity of the grants occurs "in any of the reports or acts of the Government; but in "the various reports of the boards of inquiry, they have "been treated as genuine, resting upon just considerations,

" and entitled to confirmation from the equity of the Gov-
" ernment."

About middle of page 7: "The evidence of the loss or
" destruction of the protocol is satisfactory, and the copies
" would be admitted as secondary evidence upon well set-
" tled principles. The power of commandants of "Posts"
" in the Spanish colonies, to make inchoate titles to lands
" within their jurisdiction, has been repeatedly acknowl-
" edged by this court."

Near top of page 8: These grants "having been exe-
" cuted by officers of the Crown of Spain, within its domin-
" ions, and in the exercise of an apparently legitimate au-
" thority, the presumption is in favor of the rightfulness
" of the act. No evidence has been given on the part of
" this Government to impugn it, and much evidence has
" been adduced to uphold and sustain it." And, finally, the court sustain the decision of the lower court confirming the grants.

Invoking the application, in our favor, of the principles referred to herein as already applied by the court, under similar facts, in the precedent cited, we respectfully submit that we are entitled to an affirmance of the judgment appealed from.

DURANT & HORNOR,
Attorneys for Appellees.

HENRY SAFFORD, Esq.,
of Counsel.

Washington, D. C., *August* 21, 1877.